

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4302 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ISHWARBHAI JETHABHAI TALPADA (VAGHRI)

Versus

STATE OF GUJARAT

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Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KC SHAH, APP FOR RESPONDENTS

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 05/08/96

ORAL JUDGEMENT

1. In this petition, under Article 226 of the Constitution of India, the detenu Ishwarbhai Jethabhai Talpada (Vaghri), residing at Bhutal, Taluka Nadiad, District Kheda, has brought under challenge his detention order dated 7th March 1996 under the Gujarat Prevention of Anti-social Activities Act (Act No.16 of 1985) (for short PASA).

2. The detention order was passed on 7th March 1996.

The committal order has also been passed on the same date and the grounds were recorded also on the same date as per Annexure : B. The grounds inter alia mention that the detenue has been carrying on business of manufacturing country liquor in the out-skirt of village Bhutal and carrying on anti-social activities. As many as five offences have been registered under the Bombay Prohibition Act, 1949, against the detenue. They are all bearing Numbers Prohibition 126/94, 181/94, 9/95, 135/95 and 194/95, out of which the last one is under Section 66(B) of the Bombay Prohibition Act and the particulars with regard to this offence indicate that the detenue was caught with four litres of country liquor when the Prohibition Squad was under petrolling.

3. The detenue has challenged the impugned order of detention inter alia on the ground that whereas the last offence was of June, 1995 the detention is recorded in March, 1996. Even the statements on which the detention has been recorded, came to be recorded after a period of more than six months, that is to say, on or around 9th January 1996. After passage of 2 months thereafter the impugned order of detention has been passed. No Affidavit in Reply has been filed. In my opinion, the aforesaid ground of attack against the impugned order of detention is well supported by a decision of the Honourable Supreme Court in the case of P.N.Paturkar V/s. S. Ramamurthi, reported in A.I.R. 1994 (SC) 656. That was a case under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act (55 of 1981). The order of detention impugned in that case was passed on the basis of some criminal case registered against the detenue and also on the basis of statement of witnesses after about 5 months and 8 days from registration of last case. It is no doubt true that delay ipso facto in passing an order of detention after an incident is not fatal to the detention of a person, but even the statements which were recorded in the present case were relied upon after a passage of considerable period. Under the similar circumstances the Apex Court, considering the unexplained delay, directed the detenue to be set at liberty while quashing and setting aside the detention order. In my opinion the present case is plainly covered by the aforesaid decision and requires to be dealt with accordingly.

4. In the result the petition is allowed. The impugned order dated 7.3.1996 (Annexure : A) is quashed and set aside. The petitioner - detenue is hereby

directed to be set at liberty forthwith if he is not  
required in any other case. Rule made absolute  
accordingly.

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